IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

LETTERS PATENT APPEAL No. 489 of 2005
In
SPECIAL CIVIL APPLICATION No. 9678 of 2001
With
CIVIL APPLICATION No. 7643 of 2003

For Approval and Signature:

HONOURABLE MR.JUSTICE B.J.SHETHNA
HONOURABLE MR.JUSTICE M.C.PATEL

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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DASHRATHBHAI SHANKARBHAI PRAJAPATI - Appellant(s)

Versus

G S R T C - Respondent(s)

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Appearance :
MR ND SONAGARA for MR GK RATHOD for Appellant(s) : 1,
MR HARDIK C RAWAL for Respondent(s) : 1,
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CORAM : HONOURABLE MR.JUSTICE B.J.SHETHNA

and

HONOURABLE MR.JUSTICE M.C.PATEL

Date : 20/09/2005

ORAL JUDGMENT (Per : HONOURABLE MR.JUSTICE B.J.SHETHNA)

Admit. Learned counsel Shri Hardik Rawal, who

appeared in Civil Application No.7642 of 2003 for condonation of delay for the respondent, appears and waives service for the respondent Corporation. At the joint request of the learned counsel for the parties, the matter is taken up today itself for final disposal and disposed of by this order.

2. The appellant – workman was serving as Driver with the respondent Corporation. The incident in question took place on 13th November, 1994 in which one innocent person lost his life because of the rash and negligent driving of the workman who was the driver of the bus. It clearly appears from the award passed by the Labour Court and the judgment and order passed by the learned Single Judge of this court in the writ petition that the door of the bus on the driver's side was defective and, therefore, could not be opened. Instead of immediately reporting this defect to the higher authorities, he had stopped the bus at the slope by putting stone below the tyres. Thereafter, he entered the bus from the rear door. At that time, the bus started going to the platform within the bus compound where one innocent person who was sitting near the wheel of the bus on the driver's side relieving his bladder was crushed under the wheels of the

bus and died then and there. There cannot be any better case of rash and negligent act. For his such a serious misconduct, he was found guilty in the departmental inquiry and initially punished with stoppage of eight increments by the disciplinary authority. However, the said penalty was found to be disproportionate. Therefore, the matter was taken up in *suo motu* revision by the higher authority in which maximum penalty of dismissal from service was awarded. This was challenged by the workman in Reference (LCS) No.862 of 1997 which was dismissed by the Labour Court by holding that it was such a serious misconduct wherein one innocent person lost his valuable life because of gross negligent act of the workman driver. Before the Labour Court, it was submitted that for this very Act, Criminal Case No.195 of 1995 was registered against the driver before the competent criminal court and at the end of trial, he was acquitted by the Criminal Court, therefore, the termination order should have been quashed and set aside. However, no such judgment of Criminal Court was produced before the Labour Court and the Labour Court found that the act of the Driver was such which cannot be viewed lightly and when the departmental inquiry was not challenged as per the rules before the Labour Court, then

he cannot interfere with such order of dismissal. Accordingly, the Labour Court, by its impugned order and award dated 29th July, 1999, dismissed the reference.

3. Aggrieved of the aforesaid judgment and award passed by the Labour Court, the workman approached this court by way of writ petition i.e. Special Civil Application No.9678 of 2001. Normally, when the court is satisfied that there is a prima facie case for admission, then it would admit the same and thereafter the matters are heard after some years. However, it appears that before the learned Single Judge, another advocate Shri Vaishnav appeared and learned counsel Shri Hardik Rawal, who is appearing in this appeal also, waived service of notice of rule and with the consent of the learned counsel for the parties, the writ petition was taken up on that very day i.e. On 28th December, 2001 and finally disposed of by the learned Single Judge of this court. Before the learned Single Judge, the judgment of the competent Criminal court acquitting the petitioner accused was produced for the first time. Considering the order of acquittal passed by the competent criminal court and considering the fact that the respondent Corporation had not disputed the fact that the witnesses and evidence at

the departmental inquiry were the same, the learned Single Judge, relying on the judgment of the Hon'ble Supreme Court in the case of **M. PAUL ANTHONY vs. BHARAT GOLD MINES LTD. reported in AIR 1999 SC Page 1416**, held that it was a fit case for interference with the impugned award passed by the Labour Court dismissing the reference of the workman. Accordingly, the petition was allowed and the impugned award passed by the Labour Court was set aside so also the order of dismissal dated 25th July, 1997 passed by the respondent Corporation. However, as regards the relief to be granted to the petitioner, the learned Single Judge observed that it would not be appropriate to grant the petitioner reinstatement with continuity of service and with full back wages and in the facts and circumstances of the case, the learned Single Judge observed that it would be just and proper to dispose of the petition with a direction that the petitioner shall be given appointment as a fresh employee by 31st January, 2002. The learned Single Judge also made it clear that the petitioner shall not be paid any back wages from the date of dismissal till the date of reinstatement. The learned Single Judge also clarified that the petitioner has to be employed as a fresh employee and the petitioner will not be given any

benefits for the prior period. Thus, while setting aside the impugned order of termination passed by the respondent Corporation which was not interfered by the Labour Court in the reference, the learned Single Judge only ordered fresh appointment of the workman by 31st January, 2002 but denied all other consequential benefits including continuity of service and back wages to the petitioner workman. Not only that, considering the seriousness of the incident in question, the learned Single Judge also permitted the respondent Corporation to take into consideration the award passed by the Motor Accident Claims Tribunal in favour of the dependants of the deceased in case they approach the Tribunal, while paying the salary to the petitioner - workman in future by deducting the said amount by suitable instalments.

4. Thus, from the above judgment and order passed by the learned Single Judge on 28th December, 2001, it is clear that the petitioner was to be given only fresh appointment and that too, with certain terms and conditions. As per the order passed by the learned Single Judge, the appellant - workman was to be given a fresh appointment by 31st January, 2002. Instead, as usual, there was some delay on the part of the respondent

Corporation in issuing fresh appointment order of the appellant – workman and it was issued on 16th May, 2002 after a period of more than 3½ months of the prescribed time limit fixed by the learned Single Judge. A copy of the said appointment order is produced on record by learned counsel Shri Sonagara for the appellant, which is ordered to be taken on record of this case. Having accepted the fresh conditional order dated 16th May, 2002, later on, the appellant – workman thought it fit to challenge the judgment and order dated 28th December, 2001 passed by the learned Single Judge of this court partly allowing his writ petition and denying continuity of service and back wages and the part of the order passed by the learned Single Judge in para 9 of the judgment whereby the Corporation was given liberty to recover the amount of compensation, if any, awarded to the dependants of the deceased by way of suitable instalments.

4.1 Obviously, the appeal was to be filed within 30 days from the date of judgment excluding the days on which the certified copy of the judgment was available to the party. The time has already expired long back for filing the appeal after the fresh appointment order was issued in favour of the appellant – workman by the respondent

Corporation. However, later on, the present appeal was filed by the appellant - workman before the court against the judgment and order passed by the learned Single Judge only on 27th November, 2002 alongwith an application for condoning gross delay of as many as 304 days in filing the appeal. That Civil Application No.7642 of 2003 was initially placed before another Division Bench consisting of R.S. Garg and Ravi R. Tripathi, JJ. on 11th March, 2005 and their Lordships were not satisfied with the ground in support of the application seeking condonation of delay. Therefore, the appellant – workman was given liberty to file additional affidavit in support of the application seeking condonation of delay of 304 days. Therefore, additional affidavit was filed by the appellant – workman on 24th March, 2005 in which he has stated that

> "I say and submit that after the decision of the Hon'ble High Court, I am in need of job and therefore I am waiting for an order of reinstatement and same was given on 24.5.2002. Thenafter I have visited my Advocate's office for further necessary action but I felt the another Advocate be engage and thenafter I have decided to

engage another Advocate and ultimately I have engaged a new lawyer and I have visited the office of my new lawyer on 1.11.2002 and I have discussed the case and I have handed over my papers of S.C.A. I say and submit that I have not received the certified copy of the order passed by the Hon'ble High Court dated 28.12.2001, so, I have not given any certified copy of the order to my present Advocate. So, in the absence of certified copies, my present Advocate had immediately filed L.P.A. before this Hon'ble High Court on 27.11.2002.

... ...

So, due to the reason that delay is occurred and mainly my financial position and I was very much need of employment at the relevant time and then after almost five months were passed due to the consultation with the lawyer in respect of further action."

5. From the above averments made on oath by the

appellant – workman in his application for condonation of delay, it is clear that the present appeal was filed without producing certified copy of the judgment and order passed by the learned Single Judge in the writ petition. It is unfortunate that office did not notice this and without verifying the same, permitted to circulate the present appeal alongwith an application for condonation of delay and perhaps, therefore, gross delay of 304 days in filing the present appeal was later on condoned by the same Bench on 1st April, 2005 without considering the fact that such an appeal, as it is, was not maintainable, in absence of certified copy of the judgment and order passed by the learned Single Judge. Be that as it may. Once the delay is condoned, then we are required to decide the appeal on merits.

5.1 However, learned counsel for the appellant submitted even without producing certified copy of the judgment and order passed by the learned Single Judge, he could have filed appeal within the period of limitation of 30 days before this court by making a statement in the appeal that he had applied for certified copy of the judgment and order under challenge in the appeal but so far, it is not ready for delivery and received by him. It is true

that one can file appeal against the judgment and order of the learned Single Judge within the period of limitation of 30 days before this court without certified copy of the judgment and order passed by the learned Single Judge challenged in the appeal and as soon as he receives the same, he can produce it. But after the period of limitation of 30 days expires, he was supposed to produce the certified copy of the judgment and order passed by the learned Single Judge challenged in the appeal alongwith an application for condonation of delay. Without that, such an appeal would not be maintainable in the eye of law. By merely producing an ordinary copy of the judgment in the appeal, one cannot ask for condonation of delay and entertaining the appeal on merits without producing certified copy of the judgment and order challenged in the appeal. Otherwise, all the rules providing for certified copy to be annexed with the memo of appeal would be redundant.

6. It was vehemently submitted by Mr. Sonagara for the appellant – workman that once the learned Single Judge has come to the conclusion that the impugned order of termination passed by the respondent Corporation was illegal, then he should have allowed the writ petition

fully and ordered reinstatement of the appellant – workman in service with continuity of service and full back wages. He also submitted that it was not proper on the part of the learned Single Judge to give liberty to the respondent Corporation to recover, by instalments, from the petitioner's salary, in case the award is passed in favour of the dependants of the deceased by the Motor Accident Claims Tribunal. At first look, this submission of the learned counsel for the appellant - workman is found to be attractive. But it was brought to our notice by learned counsel Shri Hardik Rawal for the respondent Corporation who appeared before the learned Single Judge in the writ petition i.e. Special Civil Application No.9678 of 2001 that except the change in the advocate of the appellant – workman in this appeal, the circumstances remain the same.

6.1 Having carefully gone through the judgment and order passed by the learned Single Judge, we have noticed that the petition of the appellant – workman filed in 2001 was heard and partly allowed in 2001 itself whereas many old cases of 1990 of similar nature are pending before this court after its admission. It also appears that the appellant – workman was in need of job and, therefore, he

might have invited such order through his counsel from the learned Single Judge, which is also clear from the affidavit filed by him in Civil Application No.7642 of 2003 wherein he has clearly stated that he was badly in need of job and waited for an appointment order. In normal circumstances, such an order of reinstatement in service would have been challenged by the respondent Corporation but it was not challenged in appeal by the respondent Corporation though the misconduct committed by the appellant – workman was of a serious nature and even the Labour Court dismissed the reference. It is always not necessary that once the person is acquitted by the criminal court, he should be exonerated in the departmental inquiry. In fact, it is clear from the impugned judgment and award passed by the Labour Court that the domestic inquiry was never challenged before the Labour Court as perverse by the workman. In that view of the matter, perhaps the appellant – workman would have been denied even fresh employment in service, in view of several other judgments of the Hon'ble Supreme Court which have not been referred to by the learned Single Judge in his order. It appears that out of sheer sympathy to the appellant – workman, such an order was passed by the learned Single Judge but the sympathy was

a misplaced one, which is clear from the subsequent conduct of the appellant – workman. When the learned Single Judge has taken balanced view in the matter and passed just and reasonable order in the writ petition in exercise of his discretionary writ jurisdiction, then there is no question of interference by this court in this appeal.

7. Mr. Sonagara then contended that the appellant – workman was initially working as a permanent employee but by an order dated 16th May, 2002, which is produced on record today by him, the workman is appointed as Badli Driver with certain terms and conditions regarding recovery of the claims amount to be recovered from his salary in equal instalments. Mr. Sonagara further submitted that the respondent Corporation has wilfully flouted the judgment and order passed by the learned Single Judge on 28th December, 2001 by not giving him fresh employment latest by 31st January, 2002, as ordered by the learned Single Judge. It is true that there was some delay of about 3½ months in issuing the fresh appointment order but this court cannot express any opinion about it in this appeal because that is not the subject matter of this appeal. In fact till the order

was passed no such grievance was made by the workman about delay in passing such order. About flouting the order of the learned Single Judge, we can say that there was no wilful disobedience on the part of Corporation. In fact, the appellant – workman was waiting for such an order which is clear from the affidavit filed by him in Civil Application No.7642 of 2003. It is also required to be noted that he had never made this grievance till now. In any case, this is not the proper forum before which such a grievance can be made. Similarly, his grievance regarding fresh appointment given to him as a Badli Driver, this court cannot express any opinion in this Appeal.

8. Before parting, we must state that having accepted the order of the learned Single Judge and the fresh conditional appointment order dated 16th May, 2002 passed by the respondent Corporation way back in 2002, it was not open to the appellant – workman to make any grievance in the appeal that too after 3 years in late 2005.

9. In view of the above discussion, on all counts, this appeal fails and is dismissed with no order as to costs.

As the appeal is dismissed, Civil Application for stay is also dismissed.

(B.J. Shethna, J.)

(M.C. Patel, J.)

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